

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SUZANNE M. McCOLE,)	Case No.: 1:14 CV 1037
)	
Plaintiff)	
)	JUDGE SOLOMON OLIVER, JR.
v.)	
)	
COMMISSIONER OF SOCIAL)	
SECURITY,)	
)	
Defendant)	<u>ORDER</u>

On January 21, 2015, Magistrate Judge Armstrong issued a Memorandum Opinion and Order, reversing the decision of the Commissioner of Social Security (“Defendant” or the “Commissioner”), and remanding the case pursuant to 42 U.S.C. § 405(g). (ECF No. 20.) After reviewing the hearing transcript and other relevant documents, the Magistrate Judge concluded that the Administrative Law Judge (“ALJ”) failed to adequately address the “other source” opinion of Ms. Molzon, a licensed social worker and Plaintiff’s case worker, in making the Residual Functional Capacity (“RFC”) determination. *Id.* On April 16, 2015, Plaintiff filed a Motion for Attorney Fees Pursuant to the Equal Access Justice Act (ECF Nos. 22 and 26), which the Commissioner opposed. (ECF No. 24.) The court referred this Motion to Magistrate Judge James R. Knepp, II.

Magistrate Judge Knepp submitted his Report and Recommendation (“R & R”) on September 14, 2015, recommending that Plaintiff’s Motion be granted in part and denied in part. (ECF No. 27.) Magistrate Judge Knepp found that Plaintiff was the prevailing party in the previous proceedings because the district court ordered a remand pursuant to sentence four of 42 U.S.C. § 405(g) on one of Plaintiff’s Objections. (R & R at 2, ECF. No. 27.) Magistrate Judge Knepp further found that the Commissioner’s position in denying Plaintiff benefits was not substantially justified

because the ALJ's decision lacked a 'reasonable basis in both law and fact' due to its failure to analyze the "other source" opinion of Ms. Molzon. (*Id.* at 4 (internal citation omitted).)

Finally, Magistrate Judge Knepp addressed Plaintiff's fee rate and hours request. With respect to Plaintiff's fee rate, although 5 U.S.C. § 504(b)(1)(ii) establishes a statutory maximum rate of \$125.00 per hour, Magistrate Judge Knepp found Plaintiff's request for \$183.75 per hour to be reasonable (*Id.* at 5), and supported by "satisfactory evidence . . . that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Bryant v. Comm'r of Soc. Sec.*, 578 F.3d 443, 450 (6th Cir. 2009). With respect to Plaintiff's hours, Magistrate Judge Knepp found that they included non-compensable tasks, such as "reading and reviewing court notifications and emails," and thus recommended reducing Plaintiff's hours by one-half hour. (*Id.* at 6.) Accordingly, Magistrate Judge Knepp recommended an award of \$5,494.13. (*Id.*)

As of the date of this Order, no objections have been filed to the R&R. Because a timely objection has not been filed, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b) advisory committee's note; *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require the district court review of a magistrate[] [judge's] factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.").

In conclusion, after careful review of Magistrate Judge Knepp's R & R and all other relevant documents in the record, the court finds no clear error. Accordingly, the court adopts as its own Magistrate Judge Knepp's R & R (ECF No. 27) and grants Plaintiff's Motion for Attorney Fees, but reduces the number of hours by one-half hour. Thus, the court grants Plaintiff an award of \$5,494.13.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR. _____
CHIEF JUDGE
UNITED STATES DISTRICT COURT

October 20, 2015